



# EMPLOYMENT TRIBUNALS

**Claimant:** Miss E Kirton

**Respondent:** A & T Trained Dogs Limited

**Heard at:** Manchester

**On:** 1-2 March 2023  
(2 March in chambers)

**Before:** Employment Judge Slater

## Representation

**Claimant:** In person, assisted by Ms Traynor, friend

**Respondent:** Mr B Hendley, Litigation Consultant, Croner

# RESERVED JUDGMENT

1. The respondent made an unauthorised deduction from wages by failing to pay the claimant her tax rebate of £731.40 on 30 November 2021 but no order for payment is made since the amount was repaid at the end of January 2022.
2. The respondent made an unauthorised deduction from wages by failing to pay the claimant at the applicable National Minimum Wage rate for the period 7-26 January 2022 and, by consent, the respondent is ordered to pay to the claimant the sum of £341.04 being the total gross amount unlawfully deducted.
3. The respondent was in breach of contract by dismissing the claimant without notice on 26 January 2022 and, by consent, the respondent is ordered to pay damages to the claimant of £66.88 in respect of the breach.
4. The complaint of unfair dismissal is well founded.
5. Remedy for the complaint of unfair dismissal will be decided at a remedy hearing on 10 July 2023.

# REASONS

## Claims and issues

1. The claimant brought claims of unfair dismissal because of asserting a statutory right, breach of contract in respect of failure to give notice of termination and unauthorised deduction from wages. The claimant had not completed two years of service by the effective date of termination so there was no claim of “ordinary” unfair dismissal.

2. In discussion at the start of the hearing, the claimant clarified that her complaints of unauthorised deduction from wages related to a) a tax rebate of £731.40 not been paid to her in November 2021; and b) being paid at the apprentice rate of £4.30 per hour for the period 7-26 January 2022, rather than being paid the National Minimum Wage (NMW).

3. The respondent accepted that they had not paid the tax rebate when it had been due but said they had paid this to the claimant at the end of January 2022. The claimant said she was not clear that this was included in the payment she received at the end of January, although later in the hearing appeared to accept that the rebate had been paid at the later date.

4. The respondent conceded that there had been an unauthorised deduction from wages in relation to the period 7-26 January 2022 and the parties agreed the amount to be paid was £341.04.

5. The respondent also conceded that they were in breach of contract by dismissing the claimant without notice and agreed that the claimant should have been paid at the national minimum wage rate during the notice period. The parties agreed that the claimant was entitled to notice of one week and that she should have been paid £8.36 per hour for 30 hours i.e. a total of £66.88.

6. In relation to the complaint of unfair dismissal, the respondent accepted that the claimant had asserted a statutory right by alleging, in a letter dated 17 January 2022, that the respondent had made an unauthorised deduction from wages. The parties agreed, therefore, that the only live issue to be determined in relation to the complaint of unfair dismissal was whether the reason or principal reason for the dismissal was that the claimant had alleged that respondent had infringed a right not to have unauthorised deductions made from wages. If I found this was the reason or principal reason for the dismissal, in accordance with section 104 Employment Rights Act 1996, the dismissal would be automatically unfair.

## The Hearing

7. The hearing had been listed for two days on 1-2 March 2023, following the postponement of the original hearing dates. An application from the respondent to postpone the March hearing because of holidays starting on 2 March 2023 had been refused, but a judge directed that the parties would not be required to attend on 2 March. At the start of the hearing, I was informed that the two witnesses for the respondent needed to leave at 2:30 pm to pick up their children from school. Mr Jayousi later apologised, saying that they had not realised that the hearing

would go on later than 2.30 p.m. I allowed an adjournment so that Mr and Mrs Jayousi could collect their children (both needing to leave because of collecting children from different schools), breaking between 2.35 pm and 3.45 pm. Mr Jayousi returned at 3.45 p.m. and continued his evidence. This loss of hearing time meant that there was no prospect of me being able to reach and deliver a decision on 1 March 2022. We completed the evidence and submissions on 1 March 2022 and I reserved my decision, making this decision in chambers on 2 March 2023. Before the end of the hearing day on 1 March 2023, I arranged with the parties a date for use for a remedy hearing if required.

8. I heard evidence from the claimant and, for the respondent, from Mr and Mrs Jayousi, who are both company directors and shareholders of the respondent company and husband and wife. Mr Jayousi is also the managing director. I had written witness statements for all these witnesses.

9. There was an electronic bundle of documents of 125 pages. During the evidence of Mrs Jayousi, she referred to needing to check emails to provide an answer to some questions. It appeared she was referring to emails which were not in the hearing bundle. She also referred to seeking advice from, and having letters drafted by, their HR consultants. I raised with Mr Hendley a concern as to whether the respondent had given full disclosure, including of correspondence with, and attendance notes of, their HR consultants, unless these were covered by legal privilege. I asked Mr Hendley to make enquiries during the lunch break as to whether there was material, not privileged, which should have been disclosed and had not been disclosed. Mr Hendley sent an email during the lunch break, enclosing an attendance note from the HR consultant and a draft letter. Mr Hendley told me that he had not made any enquiries with the respondent as to whether they had any further material which should have been disclosed and had not been disclosed. I have taken account of the additional documents disclosed during the hearing in reaching my decision.

10. The hearing was conducted by video conference. In response to a concern raised by Mr Hendley that, during our initial discussion, there appeared to be someone in the room with the claimant who was helping her, the claimant informed me that she had Ms Traynor with her, to assist her. We arranged that, when the claimant was giving evidence, Ms Traynor could also be seen on camera, so we could see that the claimant was not being assisted with her evidence. Similarly, both Mr and Mrs Jayousi were in sight when each one of them gave evidence.

11. When the claimant had finished giving evidence, I told her that she could, if she wished, have Ms Traynor question witnesses on her behalf, rather than doing it herself. Ms Traynor then asked most of the questions on behalf of the claimant and made closing submissions on behalf of the claimant.

12. During the lunch break, on instructions from his clients, Mr Hendley sent the tribunal and the claimant an email saying that the respondent had raised an issue as regards Ms Traynor. He wrote that Ms Traynor's daughter did unpaid work for the respondent, that Ms Traynor had approached the respondent and requested that she be given a job as operations director, the respondent did not agree to this and Ms Traynor removed her daughter from the respondent. Mr Hendley made no application to the tribunal in relation to this information and it did not appear to me that the email raised any issue which I needed to deal with. The Tribunal has no

rules as to who may represent a party and Ms Traynor conducted herself properly throughout the hearing.

## **Facts**

13. The respondent is a small business owned by Mr Tarik Jayousi and Mrs Louise Jayousi. They are also the company directors. Mr Tarik Jayousi is the managing director. Mrs Jayousi deals with administration. She told me, and I accept, that she does not make any decisions in relation to employees. Mr Khaldoun Jayousi is the father of Mr Tarik Jayousi. Mr Khaldoun Jayousi does not have any official role in the business. He is not a director and is not a shareholder. However, he has an unofficial advisory role in the business and apparently conducts his own business (unrelated to the business of the respondent) and the respondent's premises. Mr Khaldoun Jayousi conducted the meeting on 24 January 2022, leading to the claimant's dismissal. Mr Tarik Jayousi told me that he was the sole decision maker in relation to the claimant's dismissal. I will return to the question of whether Mr Khaldoun Jayousi played a part in the decision-making to dismiss the claimant later in these reasons. When I refer to Mr Jayousi in these reasons, I am referring to Mr Tarik Jayousi. I will refer to Mr Khaldoun Jayousi by his full name.

14. The respondent's business relates to the care of dogs.

15. The claimant started working for the respondent on 8 March 2021 as an apprentice in level 2 animal welfare through Myerscough College. Unfortunately, the claimant developed an allergy to the cleaning product used for cleaning kennels. The claimant and the respondent agreed that the claimant could transfer to another apprenticeship. She applied to Runshaw College for a level 3 digital marketing apprenticeship and was accepted on this course. According to the contract the claimant and respondent signed, this apprenticeship started on 7 June 2021. It is not clear from the evidence exactly when the original apprenticeship ended and whether there was a gap between the apprenticeships, but it is not necessary for me to make any further findings of fact in relation to the period prior to the second apprenticeship.

16. Under the terms of the apprenticeship agreement, the claimant was employed on a fixed term to 1 April 2023 but this could be terminated on notice. She was to be paid at £4.30 per hour, working 30 hours per week.

17. The respondent had to pay £550 in fees in relation to the new apprenticeship. I find, based on later references to such an agreement in the HR adviser notes and at the meeting on 24 January 2022, that there was a verbal agreement that, if the apprenticeship ended early for some reason, the claimant would pay the £550 to the respondent. The claimant agreed to this, not understanding at the time that this would have been contrary to the Apprenticeship Funding Rules.

18. There was no in-house person dealing with digital marketing at the respondent who could be the claimant's mentor, but the intention was that the claimant would get support from the respondent's external marketing adviser.

19. Although the claimant moved to being on a digital marketing apprenticeship, I find that she still did some duties which were not related to digital marketing. I base this finding on the record of the meeting the claimant had with someone from

Runshaw College on 14 December 2021. It was recorded there that the claimant had been covering reception, caring for the dogs and washing the dogs amongst other tasks.

20. I find that the claimant was not given payslips until she asked for copies of these in January 2022. It was suggested to the claimant in cross examination that she had access to these via the respondent's Bright HR system. The claimant denied that she was aware of this. Neither of the respondent's witnesses gave evidence that the claimant had been told about this access and shown how to access the payslips this way. Mrs Jayousi's response to the claimant's request for payslips, which was simply to say these would be provided, rather than referring the claimant to the Bright HR system, suggests that the claimant was not expected to access her payslips through the HR system. I find that, if the claimant did have access to her payslips through the Bright HR system, she was not aware of this during her employment.

21. On 30 November 2021, the claimant should have been paid by the respondent a tax rebate of £731.40, shown on the claimant's payslip of that date. The claimant did not see this payslip until January 2022. I find that the claimant was not aware, until she received the payslip in January 2022, that she should have received a tax rebate at the end of November. The respondent did not pay the tax rebate to the claimant at the end of November because they had not expected to be paying this and did not have the funds available to do it. I prefer the evidence of the claimant to that of Mr and Mrs Jayousi in finding that there was no discussion with the claimant in November 2021 about the tax rebate and that there was no agreement by the claimant to defer repayment of the rebate until January 2022. The claimant's letter of 17 January 2022 was written because the claimant became aware, on receiving her payslip for November in January 2022, that she should have received a tax rebate and had not received this. If she had been aware of the tax rebate and agreed to its deferred payment, there would have been no reason for her to write this letter.

22. On 14 December 2021, the claimant had a meeting with people from Runshaw College. The notes of that meeting record that there was not a dedicated digital marketing mentor in place to support and mentor the claimant and that she was not getting proper off the job time. The notes record that the claimant was frequently not even completing digital marketing tasks but was instead covering reception, caring for the dogs, washing the dogs etc. The notes record:

"We explained to Eleanor that this was not an apprenticeship, that that she should have a dedicated line manager who is experienced in digital marketing who could support and mentor her to learn the skills, knowledge and behaviours for this standard. We signposted Eleanor to our apprenticeship vacancy website and explained that we had other DM vacancies currently where she would receive the support she needed to achieve this standard.

"Eleanor explained that she was unsure if DM was even for her. She enjoys working with the dogs. We suggested she look at Myerscough College at Animal Care Apprenticeships. It transpired that this was now the 4th apprenticeship Eleanor was on, no previous ones have been achieved.

“We offered her a careers appointment at the college so she could better make an informed choice as to what career she would like moving forward. I agreed to send her vacancy and career contacts and Eleanor agreed to consider her options over the festive break.”

The notes record that a learning mentor was to contact the claimant in January upon return from the festive break to establish a decision/way forward.

23. There is a dispute between the parties as to whether there was a conversation between, Mr Jayousi and the claimant, after the claimant’s meeting with the college, about the apprenticeship ending, in the course of which Mr Jayousi offered the claimant a “normal” job on national minimum wage rates. The claimant says there was. Mr Jayousi says there was not. I prefer the claimant’s evidence on this point which is more consistent with subsequent documentary evidence. In a WhatsApp message to Mrs Jayousi on 9 January 2022, the claimant wrote that she had a phone call with the college on the 4<sup>th</sup> where the claimant had told them that the respondent had offered her a “normal” job. I consider it more likely than not that the claimant would not have written this unless it had been her understanding from a conversation with Mr Jayousi that she was to be offered a “normal” job i.e. one which was not an apprenticeship. Any non-apprenticeship role would have to be on at least National Minimum Wage rates of pay. The email from the college dated 4 January 2022 confirms that there had been a telephone call between the claimant and the college on 4<sup>th</sup> January.

24. On 4 January 2022, the claimant had a telephone call with Emma Parker at Runshaw College. Emma Parker then emailed the claimant and Mr Jayousi on the afternoon of 4 January, writing: “I refer to our earlier phone call Eleanor where you confirmed that you no longer wish to continue with our apprenticeship with Runshaw. Please can you both email me and confirm that it is okay for me to ask for the apprenticeship to be withdrawn.”

25. Mr Jayousi replied by email on the morning of 5 January 2022, writing: “from my conversations with Eleanor I can confirm that Runshaw collage [sic] have decided she can no longer continue the apprenticeship program. Rather than her not wanting to continue.” Mr Jayousi did not, in this email, ask the college a question or ask for confirmation of anything.

26. Shortly after Mr Jayousi’s email, the claimant emailed Emma Parker on 5<sup>th</sup> January, writing: “I can confirm that we have decided to go forward with the colleges [sic] decision to take me off the course.”

27. In accordance with Mr Jayousi’s oral evidence in answer to my questions, he knew, as at 4/5 January 2022, that the apprenticeship was ending but he did not know the official end date.

28. The claimant agreed that Mr Jayousi discussed with her generally the possibility of another apprenticeship and the claimant said she was not interested. I accept that the claimant was not interested in another apprenticeship with the respondent due to a lack of mentors in the business

29. The claimant needed to complete a self-assessment tax form because she has an eyelash business. She needed her payslips and tax code to be able to complete

this assessment form. She emailed Mrs Jayousi on 5 January, explaining this and asking if they could send her all of her payslips and her tax code as soon as possible. Mrs Jayousi replied by email shortly afterwards, giving the claimant her tax code and saying that she would send the claimant her payslips that day.

30. The claimant gave evidence that she received the payslips on 9 January 2022. However, I note that 9 January 2022 was a Sunday (when no post would be received) and, from a WhatsApp message of that date, the claimant was expecting to return to work the following day, following a negative test. It may be, therefore, that the claimant collected the payslips on the following day, 10 January. If the claimant had been waiting for a test result, it may be that she had been absent for a few days, which would explain why she did not collect the payslips closer to 5 January.

31. The claimant had an exchange of WhatsApp messages with Mrs Jayousi on 9 January 2022. The claimant informed Mrs Jayousi that she had received a negative test result so would see them the following day. Mrs Jayousi asked her to bring her signed contract back. The claimant asked would she not need a different one now as that was for the apprenticeship. Mrs Jayousi asked her to sign that one but wrote that she would do the claimant another one. The claimant wrote that she had had a phone call with the college on 4 January where she said that the respondent had offered her a “normal” job. The claimant attached the college’s email of 4 January and wrote “I got this email so I’m assuming that she’s stuck to her word and has taken me off.” Mrs Jayousi replied: “Cool so if u sign a contract then I can do another x That it follows through x.” The claimant sent a further message saying she thought the new one would be starting on 5<sup>th</sup> January. Mrs Jayousi replied “Yes x.”

32. When the claimant looked at her payslips, she discovered that she should have been paid a tax rebate on 30 November 2022. She had a conversation with Mr Jayousi about this. I find that he said to her that this was to reimburse the respondent for her apprenticeship course. Mr Jayousi, when answering my questions, said he did not recall saying this. However, the HR advisor’s attendance note of 18 January 2022 supports there having been a conversation of this nature. The attendance note records: “we owed her money for tax rebate - didn’t know about it and delayed payment due to not having funds. Spoke to her about it and explained that she owes us £500 likely agreed and £250 extra that we will pay.”

33. The claimant sought advice from the Citizens Advice Bureau. Based on this advice, she sent a letter to Mr Jayousi dated 17 January 2022. The claimant did not give evidence as to how she sent the letter and Mr Jayousi said he did not recall when he received this or whether it was sent by post or given to him by hand. In closing submissions, Ms Traynor said the letter had been delivered by hand. I cannot take account of new evidence given during submissions. I find it more likely than not that Mr Jayousi had received the letter on 17 January. 17 January was a normal working day and I consider it more likely than not that the claimant would hand deliver the letter, when she was attending work, rather than put it in the post and not know exactly when it would be received. I find, therefore, that Mr Jayousi received the letter before he contacted the college by email at 7:46 am on 18 January 2022.

34. The claimant's letter of 17 January 2022 asserted that, on or around 30 November 2021, the respondent had made an unauthorised deduction of £731.40 from her wages, being a repayment of emergency employee's tax contributions and that such a deduction was a breach of section 13 Employment Rights Act 1996 and therefore unlawful. She asked for payment of the amount to be put into her bank account within 14 days, writing that failure to do so would result in the commencement of tribunal action. She wrote that, if she should be dismissed, bullied, intimidated or harassed as a result of the letter, she would take further legal advice on initiating proceedings for dismissal or constructive dismissal (as appropriate) on grounds of exercising a statutory right. She referred to "your suggestion that I need to reimburse you £550 for my course" and quoted from the Apprenticeship Funding Rules, asserting that his request was in breach of their funding agreement.

35. I find that the respondent did not reply to the claimant's letter of 17 January 2022. When I asked Mr Jayousi if he had sent any reply, he said he would have to check. If there had been a reply, I consider it more likely than not that this would have been in the hearing bundle. The only reference in correspondence to the tax rebate was a statement, in the dismissal letter, that the final payment would include the rebate.

36. Early on 18 January 2022, Mr Jayousi emailed Runshaw College. He forwarded his email of 5 January 2022, writing: "I have not had a response from the below email, I'm assuming Eleanor is still enrolled on the apprenticeship as I haven't heard otherwise? Please could you let me know what's happening with this as I obviously need to know asap to formalise." In answer to Ms Traynor's questions, Mr Jayousi said that he emailed the college on 18 January because he was aware that the claimant had been kicked off the course. He said that the college's email of 4 January was confirmation that the college was starting the process, but she was still on the programme. I asked Mr Jayousi, in relation to his email of 18 January 2022 whether he could recall what prompted him to write to the college at that particular time. He said he could not. As previously noted, Mr Jayousi's email of 5 January 2022 did not ask any question or ask for confirmation of anything. It was not, therefore apparent, from the email that Mr Jayousi would have been expecting any reply.

37. The college replied promptly to Mr Jayousi's email of 18 January, writing: "Eleanor was withdrawn from the apprenticeship on 7<sup>th</sup> January".

38. Sometime on 18 January, Mrs Jayousi sought advice from the respondent's HR consultant. Mrs Jayousi sought advice on the basis of information she was given by Mr Jayousi. He wrote notes which I find she read to the adviser. If these notes still exist, they have not been disclosed. However, given that Mrs Jayousi was just acting as messenger between Mr Jayousi and the HR advisor, I find that the information Mr Jayousi wrote in his notes would have been substantially the same as those recorded by the HR advisor under the heading "general notes" on the adviser's system. This included that the adviser was told that the college had said that the apprenticeship ended on 7 January and that they only found out that day. The notes also include: "We can't afford to pay somebody the NMW that isn't qualified. She said it was verbal between us. The college told us that she was really failing. She isn't willing to do another apprenticeship."



39. On the basis of the information provided by the respondent, the HR advisor gave advice and subsequently drafted a letter to be sent to the claimant. This letter formed the basis of the letter sent to the claimant on 18 January 2022. The adviser left certain details to be completed by the respondent, including the date, time and location of the meeting and who was to conduct the meeting.

40. Mrs Jayousi wrote the letter to the claimant dated 18 January 2022, based on the draft provided by the HR advisor. She inserted a date of 19 January for the meeting, although the meeting was subsequently rearranged for 24 January to allow the claimant to be accompanied by her aunt. Mrs Jayousi also inserted that the meeting was to be conducted by Tarik Jayousi, Louise Jayousi and Carys Balderstone. Carys Balderstone was not, in fact, at the meeting and Mrs Jayousi could not explain why her name was included. Carys Balderstone is another employee. The letter did not say that Mr Khaldoun Jayousi would attend the meeting. The letter included the following:

“It has come to our attention today that you have ended your Apprenticeship agreement with the Runshaw College as of Friday, 7 January 2022. This had not been communicated to us until today, Tuesday 18 January 2022, and had no prior knowledge that you had cancelled the apprenticeship as a whole.

“I now need to discuss with you the next steps and the fact that your Apprenticeship the college is a condition of employment with AT&T Trained Dogs Ltd with a matter of urgency. The fact that you have decided to end this, we must now discuss what this means for your continued employment. Consequently, I invite you to attend a formal meeting to be held on 19/01/22 at 3 p.m.

“The purpose of the meeting is to discuss with you the fact that your Apprenticeship has ended early, and that you have not been able to achieve the qualification/training required and the fact that we may not be in a position to offer you continued employment as a digital marketer. As such, you are advised that this meeting may result in the termination of your employment on the grounds of Some other Substantial Reason, namely the end of your Apprenticeship.”

41. The claimant replied to the letter the same day. She described Mrs Jayousi's letter as “at best misleading and at worst dishonest”. She asserted that she had had discussions with Mr Jayousi on 15 December 2022, the day after her meeting with the college coordinator about leaving the course, at which it was suggested by Mr Jayousi that she would continue in her employment on a minimum wage basis. She attached the emails of the 4 and 5 January which she asserted confirmed Mr Jayousi's knowledge of her apprenticeship ending. She asserted that she had worked on a minimum wage basis since the end of her course on 5 January, establishing custom and practice and contract as agreed verbally. She referred to her letter of 17 January 2022 and wrote that she considered the respondent's letter to be a retaliatory act in response to her exercising her statutory right to pay. She wrote that the meeting was not appropriate.

42. On 18 January 2022, the claimant was blocked access to the respondent's social media platforms. She was put on paid leave. I accept the respondent's

evidence that they believed that the claimant was trying to extract information from her laptop. I accept the claimant's evidence that she was using a memory stick to retrieve college work which she might rely on if she does another course in future.

43. Mrs Jayousi wrote to the claimant on 19 January 2022 that the claimant was required to attend the meeting and failure to do so might result in this being addressed through their formal procedures.

44. The meeting was rearranged for 24 January 2022 and the claimant attended, accompanied by her aunt, with the respondent's agreement. Mr Khaldoun Jayousi conducted the meeting. Mr Jayousi attended and spoke at times. Mrs Jayousi attended to take notes but did not contribute to the discussion. The claimant recorded the meeting, with the agreement of the respondent, and a transcript of the meeting (other than odd words which were unintelligible) has been prepared.

45. Mr Khaldoun Jayousi asked the claimant if she was interested in another apprenticeship. The claimant said she did not want to do another apprenticeship. She said this was because there was no one at the respondent to teach her any apprenticeship she would be interested in. Mr Khaldoun Jayousi said (line 31), "Yes, so what I was saying I asked the question "do you want another apprenticeship?" She said "no" and I said how can we help from there if there is anything from our side, if there isn't there's really no relationship between us any more which is something we want to let you know once we deliberate once we end the meeting we will confirm to you in writing."

46. The claimant's aunt said she thought there had been a breakdown in trust so did not think this could move forward.

47. Mr Tarik Jayousi said:

"The trust I 100% agree has been broken down from my side. Eleanor, I made with two witnesses present made a verbal agreement that if this course was either college stopped it or she stopped it she would pay for it because obviously we paid for it when she's failed on a different one and we lost a £3000 funding. I was happy to not, I didn't want her to pay for it if she wasn't staying but obviously, she said can I stay and obviously we were looking for opportunities for jobs for her within the company. A day after we had this agreement whether it is bad advice from someone or something else one of her friend's mothers, she presented me with a letter saying you've unlawfully done this you've unlawfully done, you've agreed to it nothing is unlawful, sending me legislation from legal as if we had a bad relationship and it's gone sour."

48. Mr Khaldoun Jayousi wished the claimant the best in whatever apprenticeship or career she pursued and said he hoped she would keep in touch in future. He said: "we feel we have done everything we can from our side to accommodate what we've agreed. Unfortunately, it didn't suit you or you couldn't continue it for whatever reason and that is the end of the road possibly between us."

49. Towards the end of the meeting, Mr Khaldoun Jayousi said (line 65): "just to confirm we have voided the agreement and EI I say again I wish you the very best." The claimant then asked if she could get her stuff out of the office.

50. Mr Tarik Jayousi said (line 74):

“I just think that the way you handled things at the end were a little bit like I would've wanted you to approach me have I ever said no to you to anything or screamed at you or shouted at you never. We've never even had a disagreement. If you had just rung me and said, can you pay I'd have said yes straight away like I have done for everything else but there was nothing that we've disagreed so to go like down a legal route and letters and no bullying no this no that I just took it to offence to be honest that's the only thing that I wanted to add I thought we had a respectful time together we could've ended it respectfully as well that was all.”

51. Mr Khaldoun Jayousi asked the claimant, towards the end of the meeting, what the claimant was thinking of doing. She said she was not sure yet.

52. Mr Tarik Jayousi gave evidence that he was the sole decision maker in relation to the claimant's dismissal and that he made this decision after the meeting held on 24 January 2022. From the way that Mr Khaldoun Jayousi took charge of the meeting on 24 January 2022, I consider it more likely than not that Mr Khaldoun Jayousi was also involved in the decision making, whether in the capacity of advising Mr Tark Jayousi or as a joint decision maker. Mr Khaldoun Jayousi did not give evidence at this hearing.

53. On 24 January 2022, a new employee started, on a salary of £20,000 per annum. I accept the respondent's evidence that this was not a replacement for the claimant, although I find that he took over some of the things which the claimant had done. His responsibilities were wider than those of the claimant in relation to digital marketing. He maintains the website, creates new pages and hyperlinks, creates digital marketing campaigns from scratch. He does things previously done by an external agency so the respondent no longer needs to use the external agency. I accept Mr Jayousi's evidence that they were searching for this new employee before they decided to dismiss the claimant. Had the claimant remained on her digital marketing apprenticeship, the new employee would have been the claimant's mentor.

54. Mrs Jayousi wrote to the claimant on 26 January 2022. The claimant received the letter that day. The letter was drafted by the HR adviser. Mr Khaldoun Jayousi is described in the letter as a director, although he does not hold this position with the respondent. The letter is written in the first person so reads as if Mrs Jayousi had been conducting the meeting, which is incorrect. The letter includes the following:

“The meeting had been arranged to discuss the situation regarding your employment following your decision to terminate your apprenticeship with the provider Runshaw College. I discussed with you in the meeting that the purpose of your apprenticeship was to provide you with training whilst you achieve a qualification in Digital Marketing. I further explained that without the apprenticeship, the contract is unable to continue, and we are unable to provide you with alternative employment. Without the apprenticeship in place, means that you do not have the relevant qualifications for the roles that we have available here.

“I now write to confirm that unfortunately as you have made the decision to terminate your Apprenticeship, we are not able to offer you employment as a qualified Digital marketer due to not achieving the relevant qualifications. Your employment with the company will therefore terminate on the grounds or some other substantial reason,

“Your contract will terminate immediately. Your final pay advice, including any adjustments for outstanding holiday accrual and P45 will be forwarded in due course following the leaving date, along with the outstanding tax refund.”

55. The letter advised the claimant that she had the right to appeal against the decision. The claimant did not appeal. I accept the claimant’s evidence that this was because she considered the relationship had completely broken down and she did not trust the respondent to be her employer any more.

56. A payment was made of £1,268.90 to the claimant on 31 January 2022. This was the claimant’s net pay for January 2022 of £537.50 plus the tax rebate of £731.40 which should have been paid in November 2021 and was included on the November payslip. The claimant was paid at the apprentice rate of £4.30 per hour up to the end of her employment.

57. The period of ACAS early conciliation was 11 February to 24 March 2022. The claimant presented her claim to the Tribunal on 19 April 2022.

### **Submissions**

58. Mr Hendley made brief oral submissions on behalf of the respondent. He submitted that the second apprenticeship did not work out. The employer was of limited financial means. There was a discussion on 4 and 5 of January 2022 but no clear end date. There was an unfortunate coincidence on dates. The college confirmed the apprenticeship had ended on 7 January. The respondent took advice and posted an invitation letter to the hearing to consider the end of the apprenticeship. The claimant never appealed. It did not appear the claimant was aggrieved about the decision. Mr Jayousi was considering letting the claimant go if there was no apprenticeship. It was clear there was no role for the claimant and she would have been dismissed in any event. Mr Hendley invited the tribunal to find that the claimant was not dismissed because she wrote about her rebate. It was not because she asserted a statutory right.

59. Ms Traynor made brief oral submissions on behalf of the claimant. She referred to the timings. One day after the letter was handed to Mr Jayousi, the respondent looked to find reasons to dismiss the claimant. The discussion about a national minimum wage role was confirmed in the WhatsApp messages. Mr Jayousi knew the apprenticeship was ending because of a lack of support. Ms Traynor referred to Mr Jayousi’s comments during the meeting on 24 January. She requested that the tribunal find the claimant was unlawfully dismissed because of asserting a statutory right.

### **The Law**

60. Section 104(1)(b) Employment Rights Act 1996 (ERA) provides that an employee who is dismissed shall be regarded as unfairly dismissed if the reason

or principal reason for dismissal is that the employee alleged that the employer had infringed a right of his which is a relevant statutory right. Relevant statutory rights include any right conferred by the ERA for which the remedy for its infringement is by way of a complaint or reference to an employment tribunal: section 104(4)(a). The right not to have unauthorised deductions made from wages is a right conferred by the ERA for which the remedy is by way of a complaint to an employment tribunal: sections 13 and 23 ERA.

61. Where an employee lacks the requisite continuous service to claim ordinary unfair dismissal, the burden of proof lies on the employee to prove, on the balance of probabilities, that the reason for dismissal was an automatically unfair reason: **Smith v Hayle Town Council 1987 ICR 996 CA.**

### **Conclusions**

62. The breach of contract claim and the unauthorised deduction from wages claim in relation to pay for the period 7-26 January 2022 were dealt with by consent.

63. The respondent had accepted that the tax rebate should have been paid in November 2021. The claimant did not expressly accept, at the start of the hearing, that the rebate had been paid late in January 2022 but appeared to accept this later in the hearing. Since I did not confirm with her that she accepted that payment had been made, albeit late, I have not dealt with this complaint by consent. I have found as a fact that payment was made as part of the payment made at the end of January 2022. I conclude that there was an unauthorised deduction from wages, since the payment should have been made in November 2021. However, I make no order for payment, since it was paid in January 2022. The claimant has not claimed any consequential financial loss suffered because of the late payment.

64. In relation to the complaint of unfair dismissal, since the claimant had completed less than two years' service as at the effective date of termination, the burden of proof lies on the claimant to establish, on a balance of probabilities, that the reason, or principal, reason for dismissal was because she had asserted a statutory right.

65. The respondent conceded, correctly, that the claimant had asserted a statutory right by alleging, in her letter of 17 January 2022, that the respondent had made an unauthorised deduction from wages by not paying her tax rebate in November 2021.

66. The issue I need to decide is whether the reason or principal reason for dismissal is that the claimant made this allegation. The claimant says it is and points, in particular, to the timing of the letter of 18 January 2022, inviting her to a meeting which, the letter warns the claimant, could lead to the termination of her employment. The respondent says this was a coincidence of timing; the reason for the termination of the claimant's employment was that the claimant's apprenticeship had come to an end and the respondent had no position for someone without relevant qualifications, who was not on an apprenticeship.

67. I consider that the following factors point towards the reason or principal reason for dismissal being that the claimant asserted a statutory right, rather than the reason being the ending of her apprenticeship and lack of suitable alternative roles.

- 67.1. Before the claimant's letter of 17 January 2022, and before the claimant's conversation with the college on 4 January 2022, I found that Mr Jayousi had agreed with the claimant that she would stay on, after the apprenticeship, in a "normal" job at NMW rates (see paragraph 23).
- 67.2. Many, if not all, of the duties which the claimant had been doing, including covering reception, caring for the dogs and washing the dogs, (see paragraph 22) and dealing with social media, could have been done by the claimant whether or not she was on an apprenticeship. She did not need any particular qualifications to do these tasks. The letter of 26 January 2022 is misleading in stating that the claimant did not have the relevant qualifications for roles with the respondent (see paragraph 54). No qualifications were needed for what the claimant had been doing and continued to do after the respondent knew her apprenticeship was ending.
- 67.3. There was no obvious reason, other than the claimant's letter of 17 January 2022, why Mr Jayousi would write to the college on 18 January 2022 (see paragraph 36).
- 67.4. There was no obvious reason, other than the claimant's letter of 17 January 2022, why Mr Jayousi waited until 18 January 2022 to get advice from the respondent's HR advisor (see paragraph 38). He had known that the apprenticeship was ending from 4/5 January 2022. If he thought that the ending of the apprenticeship might result in the ending of the employment relationship with the claimant, there is no obvious reason why he did not seek advice earlier.
- 67.5. The 18 January 2022 letter was misleading in suggesting that the respondent had no knowledge until 18 January 2022 that the apprenticeship was ending (see paragraph 40).
- 67.6. Mr Jayousi never responded to the claimant's letter of 17 January 2022 (see paragraph 35).
- 67.7. Mr Jayousi's upset, as expressed at the meeting on 24 January 2022, with the claimant having written to him in the terms of the letter of 17 January 2022 (see paragraphs 47 and 50).
- 67.8. The timing of the respondent setting in motion a process which would lead to the claimant's dismissal, a day after the respondent received the claimant's letter of 17 January 2022.
68. For these reasons, I conclude that the claimant has satisfied me, on a balance of probabilities, that the reason or principal reason for dismissal was that the claimant, by her letter of 17 January 2022, had asserted a statutory right. I conclude that the complaint of unfair dismissal is well founded.

RESERVED JUDGMENT & REASONS SENT TO THE PARTIES ON  
10 March 2023

FOR EMPLOYMENT TRIBUNALS

**Public access to employment tribunal decisions**

Judgments and reasons for the judgments are published, in full, online at [www.gov.uk/employment-tribunal-decisions](http://www.gov.uk/employment-tribunal-decisions) shortly after a copy has been sent to the claimant(s) and respondent(s) in a case.



## NOTICE

### THE EMPLOYMENT TRIBUNALS (INTEREST) ORDER 1990 ARTICLE 12

Case number: **2402701/2022**

Name of case: **Miss E Kirton** v **A&T Trained Dogs Ltd**

Interest is payable when an Employment Tribunal makes an award or determination requiring one party to proceedings to pay a sum of money to another party, apart from sums representing costs or expenses.

No interest is payable if the sum is paid in full within 14 days after the date the Tribunal sent the written record of the decision to the parties. The date the Tribunal sent the written record of the decision to the parties is called **the relevant decision day**.

Interest starts to accrue from the day immediately after the relevant decision day. That is called **the calculation day**.

The rate of interest payable is the rate specified in section 17 of the Judgments Act 1838 on the relevant decision day. This is known as **the stipulated rate of interest**.

The Secretary of the Tribunal is required to give you notice of **the relevant decision day**, **the calculation day**, and **the stipulated rate of interest** in your case. They are as follows:

**the relevant decision day** in this case is: 10 March 2023

**the calculation day** in this case is: 11 March 2023

**the stipulated rate of interest** is: **8% per annum**.

Mr S Artingstall  
For the Employment Tribunal Office



## GUIDANCE NOTE

1. There is more information about Tribunal judgments here, which you should read with this guidance note:  
[www.gov.uk/government/publications/employment-tribunal-hearings-judgment-guide-t426](http://www.gov.uk/government/publications/employment-tribunal-hearings-judgment-guide-t426)

If you do not have access to the internet, you can ask for a paper copy by telephoning the Tribunal office dealing with the claim.

2. The payment of interest on Employment Tribunal awards is governed by The Employment Tribunals (Interest) Order 1990. Interest is payable on Employment Tribunal awards if they remain wholly or partly unpaid more than 14 days after the **relevant decision day**. Sums in the award that represent costs or expenses are excluded. Interest starts to accrue from the day immediately after the **relevant decision day**, which is called **the calculation day**.
3. The date of the **relevant decision day** in your case is set out in the Notice. If the judgment is paid in full by that date, no interest will be payable. If the judgment is not paid in full by that date, interest will start to accrue from the next day.
4. Requesting written reasons after you have received a written judgment does **not** change the date of the **relevant decision day**.
5. Interest will be calculated as simple interest accruing from day to day on any part of the sum of money awarded by the Tribunal that remains unpaid.
6. If the person paying the Tribunal award is required to pay part of it to a public authority by way of tax or National Insurance, no interest is payable on that part.
7. If the Secretary of State has claimed any part of the sum awarded by the Tribunal in a recoupment notice, no interest is payable on that part.
8. If the sum awarded is varied, either because the Tribunal reconsiders its own judgment, or following an appeal to the Employment Appeal Tribunal or a higher court, interest will still be payable from **the calculation day** but it will be payable on the new sum not the sum originally awarded.
9. The online information explains how Employment Tribunal awards are enforced. The interest element of an award is enforced in the same way.